

## **REMARKS**

The Office Action mailed on April 5, 2005 has been received and reviewed. Claims 1–21 are currently pending in the application. Claims 1–14 and 16–21 stand rejected and claim 15 has been objected to as being dependent on a rejected base claim. The indication of allowable subject matter in claim 15 is noted with appreciation. Claim 17 has been amended without prejudice or disclaimer herein. Reconsideration of the above-referenced application is respectfully requested in view of the above amendments and the following remarks.

### **Informalities**

The abstract of the disclosure has been objected to in the Office Action because the abstract of the disclosure contained phrases which can be implied. *See, Office Action* at p. 2, ¶ 1. Applicant has amended the specification to replace the abstract with an amended abstract. It is believed that the abstract no longer contains any such phrases.

The specification has been objected to in the Office Action due to an incorrect reference numeral in paragraph [0043]. *See, Office Action* at p. 2, ¶ 2. Applicant has amended paragraph [0043] to appropriately refer to “crush portion 36”.

The specification was also objected to for failing to provide proper antecedent basis for the claimed subject matter. Specifically, it is stated in the Office Action that the step of “coupling” a lever to the body after providing a body and preceding securing a porous element to the body as recited in claim 21 does not have antecedent basis in the specification. *See, Office Action* at p. 2, ¶ 3. Paragraph [0036] has been amended as previously set forth and it is now believed that proper antecedent basis has been provided.

Applicant submits that the amendments to the specification overcome the objections. As such, Applicant respectfully requests withdrawal of the objections to the specification.

**Rejections based on 35 U.S.C. § 112**

Claim 17 has been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention due to lack of antecedent basis for “the porous plug”. *See, Office Action* at p. 2, ¶ 4. Claim 17 has been amended as previously set forth to depend from claim 16 as antecedent basis for “the porous plug” is provided in claim 16. Applicant respectfully submits that the amendment overcomes the rejection. As such, Applicant requests withdrawal of the rejection of claim 17 under 35 U.S.C. § 112, second paragraph.

**Rejections based on 35 U.S.C. § 103**

Claims 1–12 and 16–21 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,536,975 to Tufts (hereinafter the “Tufts reference”) in view of U.S. Patent 3,704,072 to Kaufman (hereinafter the “Kaufman reference”). *See, Office Action* at p. 3, ¶ 4. Additionally, claims 13 and 14 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the Tufts reference in view of the Kaufman reference, and further in view of U.S. Patent 6,371,675 to Hoang et al. (hereinafter the “Hoang reference”). *See, Office Action* at p. 4, ¶ 2. Applicant respectfully traverses these rejections, as hereinafter set forth.

35 U.S.C. § 103(c) states as follows:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

With reference to the Tufts reference, it is respectfully submitted that such reference qualifies as prior art only under 35 U.S.C. 102(e) and that the subject matter thereof was developed by "another person".

Further, it is respectfully submitted that the subject application (Application Serial No. 10/748,896) and the Tufts reference (U.S. Patent 6,536,975) were, at the time the invention of the subject application was made, owned by or subject to an obligation of assignment, to Medi-Flex Hospital Products, Inc. As such, the subject matter of the Tufts reference shall not preclude patentability of the subject application. *See*, 35 U.S.C. § 103(c). Accordingly, it is respectfully submitted that the Tufts reference should be disqualified as prior art against the subject application.

With reference to claims 1–12 and 16–21, it is respectfully submitted that the Kaufman reference taken alone is insufficient to establish a *prima facie* case of obviousness as the Kaufman reference alone neither teaches nor suggests all of the limitations of the rejected claims. *See, In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); *see also*, MPEP §706.02(j). As such, it is respectfully requested that the 35 U.S.C. § 103(a) rejection of claims 1–12 and 16–21 be withdrawn.

With reference to claims 13 and 14, it is respectfully submitted that the Kaufman reference in view of the Hoang reference is insufficient to establish a *prima facie* case of obviousness as the asserted combination of references neither teaches nor suggests all of the limitations of the rejected claims. As such, it is respectfully requested that the 35 U.S.C. § 103(a) rejection of claims 13 and 14 be withdrawn.

Each of claims 1–14 and 16–21 is believed to be in condition for allowance and such favorable action is respectfully requested.

**Allowable Subject Matter**

Claim 15 has been objected to as being dependent upon a rejected base claim. However, it is indicated that claim 15 would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. *See, Office Action* at p. 5, ¶ 2. Applicant notes the indication of allowable subject matter with appreciation. However, claim 15 depends indirectly from claim 1 which, as indicated above, is believed to be in condition for allowance. As such, claim 15 has not been amended herein.

### CONCLUSION

For the reasons stated above, claims 1-21 are believed to be in condition for allowance and an early notice thereof is respectfully solicited. Should it be determined that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicant's undersigned attorney.

It is believed that no fee is due in conjunction with the present amendment. However, if this belief is in error, the Commissioner is hereby authorized to charge any amount required (or to credit any overpayment) to Deposit Account No. 19-2112.

Respectfully submitted,



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